

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7153 of 2015

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Daya Nand Sharma son of Keshwar Sharma Resident of village - Muslim Tola, Jai Nagar Barka Gaon Hazaribagh, P.S. - Hazaribagh, Distt. - Hazaribagh (Jharkhand).

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Forest Department, Government of Bihar, Patna.
2. The District Magistrate, Rohtas at Sasaram.
3. The Divisional Forest Officer-cum-Authorised Officer, Rohtas Forest Division Sasaram, Distt. - Rohtas.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajani Kant Singh

For the Respondent/s : AC to GA-5

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

3. 11-09-2015 At the very outset, learned A.C. to Govt. Advocate – 5 again makes a prayer for adjourning the case for obtaining instruction and filing counter affidavit. On earlier occasion also i.e. 13-08-2015, on the prayer made by learned counsel for the State, four weeks' time was granted for obtaining instruction and filing counter affidavit. On the last date, orally it was made clear that no further adjournment shall be granted, even then, without filing counter affidavit, again same prayer is being reiterated. Accordingly, the prayer for adjournment stands refused.

The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has prayed for directing for provisional release of his truck, bearing registration

no. JH-02G/5850 (hereinafter referred to as the 'vehicle in question') in connection with Confiscation Case No. 82 of 2015 (arising out of Forest Case No. 39 of 2015) registered under Sections 33, 41 and 42 of the Indian Forest Act, 1927 (hereinafter referred to as the 'Forest Act').

Sri Rajni Kant Singh, learned counsel for the petitioner submits that the vehicle in question was seized by police officials, not from the protected area of forest, but while, the truck was moving on NH-2, it was intercepted and on an allegation of commission of forest offences, the truck was seized. It was alleged that truck was illegally carrying stone chips measuring about 400 C.F.T. A further plea has been taken that the said stone chips were being carried on appropriate challan. The chips were loaded from crusher machine of one Sri Vinod Singh, M/s Jai Maa Bhawani Construction Chaparwar, Palamu (Jharkhand) and same was being carried to Sasaram. However, in the midst, it was intercepted and seizure was effected on 26-04-2015. It has been argued that even for the time being, if it is assumed that any offence was committed, in any event, there was no application of Forest Act, which has been alleged to be committed in the F.I.R. i.e. offence under Sections 33, 41 and 42 of the Forest Act. He submits that the truck was loaded with stone chips, which is not a



forest article. In any event, he submits that though, it was illegal seizure, confiscation proceeding was initiated and on notice, immediately thereafter the petitioner appeared and filed his written statement, vide **Annexure – 3** to the writ petition. Besides filing show cause, the petitioner has also prayed for provisional release of the vehicle in question by way of filing an application in Confiscation Case No. 82 of 2015 on 02-05-2015 (**Annexure – 4** to the writ petition).

Learned counsel for the petitioner further submits that the vehicle in question is lying in open sky and there is every possibility of decay of the same. The petitioner is ready to furnish appropriate bond and sureties. He has also relied on an order passed by this Court on 16-02-2015 in C.W.J.C. No. 377 of 2015, which was disposed of alongwith other writ petitions. In the said case also, direction for provisional release has been granted.

Keeping in view the fact that by allowing a vehicle in question to remain in open sky may not serve any purpose, save & except, allowing the vehicle to be destroyed, the Court is of the opinion that in view of facts and circumstances, direction can be issued for provisional release of the vehicle in question in favour of the petitioner on fulfillment of the following conditions:-

- (a) **The petitioner shall produce all original papers supporting the ownership of the vehicle in question including the registration**



- papers, the insurance paper, the tax token and the pollution certificate.
- (b) The petitioner shall file an undertaking in the form of an affidavit that he shall not alienate the vehicle or transfer the vehicle in favour of any third party during the pendency of the confiscation proceedings and shall produce the vehicle as and when required in the confiscation proceedings
 - (c) The petitioner shall furnish such security as deem fit and proper by the Divisional Forest Officer-cum-Authorized Officer, Rohtas at Sasaram, which shall neither be in the form of cash nor bank guarantee; and
 - (d) The release of the vehicle shall be governed by the final outcome of the confiscation proceedings.

All the formalities must be completed within four weeks from the date of receipt/production of a copy of this order.

The writ petition stands allowed.

(Rakesh Kumar, J.)

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